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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 001227

SIPDIS

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TAGS: PGOV TU

SUBJECT: TURKS PLAY THE WAITING GAME AS AKP CLOSURE CASE
ENTERS FINAL PHASE

REF: A. ANKARA 1223

1B. ANKARA 1217

Classified By: Political Counselor Daniel O'Grady for reasons 1.4(b,d)

11. (C) Summary. Following oral arguments last week, the closure case against the ruling Justice and Development Party (AKP) enters its final phase. Once the Constitutional Court's rapporteur completes his assessment of the evidence, including a non-binding recommended ruling, the chief justice will convene the 11-member court to decide the case. Signs are increasing that a ruling may come by early August, although the court is bound by no timeline. AKP has pushed hard publicly for an early verdict, both because delay fuels fissures within the party and makes defections more likely and to give the party more time to reorganize if AKP is banned, as many expect. The option of a ruling short of closure continues to attract adherents, particularly as tensions over Turkey's political and economic stability escalate. As the waiting continues, AKPers are gaming the options and preparing for whatever may come next. End summary.

ORAL ARGUMENTS

12. (U) Oral arguments in the closure case against the ruling Justice and Development Party (AKP) concluded July 3, overshadowed by the explosive detention of over 20 more suspects in the year-old Ergenekon investigation (refB). Chief Prosecutor Yalcinkaya's two-hour oral presentation July 1 charged AKP with trying to bring Sharia law to Turkey, citing a five-stage plan to impose an Islamic structure on Turkish society. He warned the party poses a clear and imminent threat to Turkey's democracy, placing AKP outside the protection of the constitution, the EU's Venice Criteria for closing political parties and the European Court of Human Rights (ECHR) standards. AKP efforts to portray institutions that are the Republic's protectors as pro-coup are part of its plan to obstruct their actions, he said.

13. (U) AKP efforts to lift the headscarf ban at universities, and the Constitutional Court's June 5 annulment of AKP-sponsored amendments to do so, strengthen anti-secularist charges, Yalcinkaya claimed. The party's attempts to draft a new constitution are further proof of AKP's hidden agenda to change the regime, he added. Yalcinkaya seized on recent remarks by AKP Vice Chairman Dengir Mir Mehmet Firat that Ataturk's comprehensive reforms in the 1920's were "traumatic" for Turkish society, portraying them as critical of the Republic's revered founder. He also used PM Erdogan's connection to Yasin al-Qadi, a Saudi businessman with alleged

links to terrorist organizations, as evidence AKP has violent inclinations. Positive comments by Abdullah Gul about Fetullah Gulen schools and a proposal by AKP MP Ahmet Iyimaya to allow parliament to suspend questionable Court decisions were also cited as evidence of AKP's anti-secularist tendencies.

¶3. (U) AKP's Cemil Cicek took over six hours July 3 to argue the weakness of the prosecutor's case and counter claims AKP has served as a focal point for anti-secularist activities. "We based our defense on the premise the case should never have been opened," Cicek said, claiming Yalcinkaya's ideological, political arguments ignored precedent, relied on inadmissible evidence and applied faulty legal reasoning. A senior AKPer reportedly described the party's oral defense as a "manifesto of democracy." Cicek told the Court AKP has no agenda other than expanding human rights and freedoms, including lifting the headscarf ban. The economic, social, cultural and legal reforms the party sponsored during six years in government, many adopted with opposition Republican People's Party's (CHP) support, brought Turkey closer to Ataturk's goal of having being a contemporary civilization, Cicek argued. He refuted the charge that AKP is a moderate Islam project, stating AKP has never aimed to establish Sharia law or transform Turkey into a regime based on religious rules. He cited EU practices on party closures, noting that universal standards should also apply in Turkey, a democratic, rule of law country that respects human rights. Cicek reiterated the point made in AKP's written defense that the party opposes interpreting secularism as hostile to religion and rejects using religion and ethnicity to achieve

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political aims or to pressure people who think and live differently. He reminded the Court the decision will shape the formation of a new infrastructure for rights, freedoms and democracy in Turkey.

A RELEVANT PRECEDENT?

¶4. (U) Cicek cited the Court's January decision not to close pro-Kurdish Rights and Freedom Party (Hak-Par) on separatist charges dating from 2002 as a precedent supporting AKP's defense. The Court's reasoning, published July 1, stated party closures are not in line with democracy. In democratic countries, political parties are not banned unless they pose a serious threat to the regime, the Court opined, adding party bylaws and programs are expressions of free speech under Turkey's constitution and cannot be the basis for party closure. While six judges voted to close Hak-Par and five opposed, the party remains open because closure requires at least seven votes. The Court's opinion, submitted by the five judges opposing closure, emphasized that the priority should be enabling the democratic regime to survive. Since there was no evidence the party would resort to unconstitutional means to achieve its goal of a Turkish-Kurdish federation, the Court concluded the party's rhetoric constituted protected free expression.

¶5. (C) The Hak-Par ruling may impact the AKP case, according to AKP Vice Chairman Nihat Ergin, who views it as an indication of the Court's position on 2001 amendments to party closure provisions. "We can't know whether the Court was sending a message," he added, "but we read it hopefully."

However, fellow AKP MP Reha Denemec downplayed the Hak-Par decision's relevance for AKP's case. He noted Erdogan and another politician, Hazan Celal Guzel, were both charged with the same offense, under similar circumstances, in 2001; the Court rejected the case against Celal Guzel and six months later ruled against Erdogan. "Celal Guzel had no chance of getting power," Denemec pointed out, "Erdogan did, and he went on to take power."

THE WAITING GAME

¶6. (U) The Court-appointed rapporteur is now preparing his

non-binding assessment of the case for review by the 11 judges. Osman Paksut, the Court's vice president (and no friend of AKP), said July 3 that a decision might come within 4-6 weeks, adding, "It is impossible to give an exact date now but we intend to conclude the case as soon as possible." The decision will be official once the Court's reasoning is published in the Official Gazette. None of the judges will leave Ankara until a verdict is rendered, Paksut stated. Contacts tell us at least three judges have purchased 10-14 day vacation packages in Russia the week of August 4.

¶7. (C) "Everyone is in waiting mode," AKP's Ergin told us, emphasizing the damage caused by letting the case drag on. "The public is confused, investors are hesitating. This has a negative impact on our society and international relations." Ergin predicts the decision will come by the end of July but acknowledged "the Court is not obliged to decide when we want." Denemec, who expects the decision in August, concluded, "Whether or not AKP is closed, it seems we will have power. If there are early elections, we should get 50% or so of the votes. The support of the people will solve our problems." AKP Vice Chairman Egemen Bagis was similarly upbeat during a July 8 conversation with DCM and PolCouns, suggesting that being banned could boost AKP's electoral support as high as 62 percent. Bagis also noted PM Erdogan is unfazed by the prospect of being banned. "He's seen this movie before, several times," he said.

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